To His Majesties High Commissioner, and the Right Honourable Estates of Parliament,

The Petition of *Alison Aitkin*, and Mr. *Duncan Robertson* her Husband, for his interest.

Humbly sheweth,

THAT whereas the Bishop of *Galloway* having Three Daughters, and the Eldest and second having had sufficient portions from their Father, by their Contracts of Marriage; But his Youngest Daughter *Alison* (who deserved best, having stayed longest with him, and waited on him in his old Age) getting no Portion, had therefore the only proper interest to be his Executrix, And Mr. *Duncan* in his Wifes name obtained her decerned Executrix by the Commissars of *Edinburgh* gave up Inventars, found Caution to make the Executrie goods forthcoming to all parties having interest, and expedes the Confirmation upon an Edict; To which the other two sisters and their Husbands, and the Relict were personally cited; And whereupon Mr. *Duncans* Wife is sole Executrix *Dative*, *qua* nearest of Kind, discerned and confirmed: The most of the effects of which Executrie lying in *Galloway*, And extending to a considerable summ (besides the *ann* half Crops 1688, the Bishop surviving *Martinmass* 1687,) Mr. *Duncan* pursues the Debitors, and by Proces made considerable progress in executing of this Testament, and obtained Decreets and Acts against a great many of them; And he being obliged to do diligence, and discussed the Invemat, And that a considerable summ was in the hands of the Viscount of *Stair*; And as that the Bishop in his own life time had commenced an Action against him for 1257 pounds *Scots* money, or thereby yearly, as Feu and Teind duties payable to him for several years, Wherein Mr. *Hugh Dalrymple* Advocat, then Factor to, or Attorney constitute be the Viscount, was ordained to depone anent the possession and Quantity of the Rent, That a fifth part of the free rent might be deemed as the Teind, And their Charters was ordained to be produced, that the Feu dutie might be instructed by the *Redendo*; There was a Summonds of Transferring of the said Action raised at the Executrix instance, and execute & after some communing, in order to a Transaction which took no effect: And particularly with Mr. *Hugh* who was so far from questioning Mr. *Duncans* Right to the Executrie, That he offered him 6000 merks, or thereby for what was due be the Lord *Stair* to the Bishop before his decease, But he would have it to be a part of the Transaction, That Mr. *Duncan* should accept of some bonds granted be *Mr. Patrick Smith* for certain summs payed to him, which *Mr. Duncan* refusing, in respect he did not think *Mr. Patrick Smith* Responsal, and that it would be so much lossed money to him, and that what was offered, was not. lookt, be *Mr. Duncan*, as the half of what was truely due, the communing broke up, at which time the said *Mr. Hugh Dalrymple* said to Mr. *Duncan Robertson*, these or the like words, *Come, come, if you do not this, we will find a way to lay you aside.* And thereafter the Viscount of *Stairs* had raised a suspension of multiply ponding against the Executers and nearest of Kinn, and others; The other two sisters, and their husbands (by advice of some of these Interessed) Raises, and insists in a Reduction of the Testament and Confirmation: And for us to denude in their favours of the

right of the office of Exrecutrie, and to deliver to them all goods in our hands that was extant, and to Compt and Reckon for our Intromissions; And albeit the Reduction was first raised in both the two eldest Daughters names, Yet the Summonds was thereafter cutted, and the second sisters name left out, in consideration, that she was in the same Case with *Alison* the youngest daughter, as to a provision by a Bond made by the Father, and found amongst his Papers, which the Eldest daughter made use of to exclude us from any share of the Executrie, the Eledest sister having first agreed with the second sister, for all her pretentions: So that the Action, at last was carried on in name of the Eldest sister; And after some debate upon the Reasons of Reduction in *February* 1692, Their was an Interloquitor Reduceing the Confirmation, and yet ordaining us to assign the same, & finding that the uplifting of the sums, in the said Bond of provision was no alteration of the Defuncts will, in the Destinantion of the summs: Albeit done conform to an faculty therein, which the Defunct Exerced; And besides I the said *Alison* had many other good reasons to refuse the provision; And likewise my Father was so little carefull of my acceptance, as that he uplifted the summ in his own time, But thereafter upon a Petition given in be us. And Answers thereto be the said Eldest sister, The Lords declared they would hear the parties Debate the points *in jure*, represented in our Petition in their own presence, which were in short these. 1*mo*. By the Laws of this Realm, and the Lords constant and daily practique, This interest of Children and as neareast of Kinn is never taken away where there is neither an nomination of an Executor or any Generall or particular Disposition of the subject matter falling under Executrie, Unless the Children had renounce & discharged not only the Bairns part or person natural, which is the Legitime: But all that they succeed to by their Fathers Deceass. 2*do*. What the import of this pretended Bond is as to its Narrative and Inductive Cause; And whether the uplifting of the summ therein do evacuat, make void or annull the same, as do the payment and uplifting of summs contained in Bonds. Securities make such Writes of no force nor effect. 3*tio*. Whether Mr. *Duncan* was oblieged *in hoc statu processus*, to debate anent the division of the Executrie, since there is a second Sister, who is neither compearing, nor called; It being the Geueral Interest, and good of all Parties concerned, that the Inventar be first discussed, and the Testament and Execute, seeing Mr. *Duncan* has found Caution, beyond Exception; And albeit we relyed upon the Faith of the Lords deliverance, And expected a Hearing upon these three points, yet upon the very last day of the Summer Session 1692, without hearing us upon the foresaid three points, there is minuts and Interloquitor made up Reduceing the Confirmation, and ordaining us to denude of the Executrie, upon which there was a decreet of Reduction Extracted, and which last minuts and Interloquitor was must unwarrantable made up, in sua far as, *first*, The minuts were drawn, and Interloquitor made up out of the Parliament House by Mr. *Patrick Smith* and hit Procurators as Mr. *John Mkinize* the Clerk cannot Refuse: and is known to others Members of Court. 2*do*. It was the Last day and the last hour of the Summer Session 1692 Presented to the Clerk be the partie, or some other in their name by calling of him from the Inner house, to the side Bar, and urging him to Carry in, and present it to the President to get it signed, and when the Clerk scrupled they with enforceing arguements laid home to the Clerk, how he was no further concerned then to carry these minuts with the subjoined Interloquitor, so framed and prepared be them, and present the same to the President, which accordingly was signed. 3*tio*. The said *Mr. Duncan Robertson* knowing nothing of that Interloquitor, nor yet his Procurators for many dayes in the vaccancie, and challanging the Clerk as being out of his duty, he answered, there was nothing extracted, and that he would not suffer to give any extract thereof, without expres order from the Lord President, who having some dayes thereafter ordered the Decreet, be vertue of that Interloquitor to be given out, we and our Procurators addressed to the Lord President having the Clerk alongst with these made up Minutes and Interloquitor; But in place of redressing us, my Lord President caused the Clerk transcrive the same framed Interloquitor, with the pretended Minutes at his own sight, in his own Chamber, and so privatly signed the said Interloquitor in time of vaccancie, as the Clerk cannot de-

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ny, and appears by the proceſs, and the Clerk accordingly did give out an extract of the ſaid Decreet, reducing and overturning the Teſtament, whereupon there followed a tranſaction betwixt my Lord Preſident, and Mr. *Patrick Smith* and his Spouſe, whereby my Lord Preſident as he acknowledged himſelf, is diſchar, ed not only of theſe years preceeding the Biſhops Death, but alſo of the *Ann:* Cropt 1688, from which it was not in Biſhops power to ſeclude his Daughter *Allſon* extending in all as the Biſhop claimed 8799 *lib:* which with the Ann: makes now in hail 9427 *lib:* or thereby; And we have given in a Bill of Suſpention upon the foreſaid ground, the Clerk of the Bills, *James Nicolſon*, refuſed to write any ſiſt upon the ſame, in reſpect as he affirmed he was diſcharged to preſent any ſuch Bill of Suſpenſion, albeit in that ſuſpention we offered Conſignation, upon which we were neceſſitate to apply to the Lord *Aberuchil* then ordinar upon the Bills, that he might cauſe the Clerk write upon the ſaid Bill, who having called the ſaid *James Nicolſon*, ordered him to write upon the ſame, and not prevailing, The ſaid Lord *Aberuchil* was neceſſitat to write the ſeveral ſiſts of Execution himſelf upon the Bill, and in the mean time ordained the Charger to ſee and anſwer the ſame, and becauſe the ſaid *James Nicolſon* would not take in the papers offered to be conſigned by the ſaid Bill of Suſpenſion, the Lord *Aberuchil* ordered us to bring the Bonds and other Writes concerning the Executrie to him, together with an Aſſignation ſubſcrived by us, in order to be conſigned in obedience to the Decreet, (I the ſaid Mr. *Duncan* being under Caption) And his Lordſhip ordered the Papers together with the Aſſignation to be put in the hands of *James Niſmith* Under Clerk, in the ſaid Mr. *John M'kenzies* Chamber, and marked the Aſſignation with his own hand, and according to my Lord *Aberuchils* Order, the Bonds with the other papers and Aſſignation, were delivered to the ſaid *James Neſmith* as conſigned papers in his hands, there to ly untill the Bill of Suſpenſion ſh uld be diſcuſt before the Lords; And albeit the ſaids Bands, other Writes and Aſſignation to the Executrie were only conſigned papers, and that the ſaid Mr. *Patrick* and *Archibald Smith* Writer, his Son, having borrowed up the ſame from the Clerk upon truſt, yet they immediatly within very few dayes thereafter, Regiſtrat the Aſſignation in Mr. *James Dalrymple* Clerk hss Chamber, and that ſame day it was regiſtrat, *Hugh Roſs* the Lord Preſidents Servant took out an Extract thereof, beſides ſeveral other Extracts that were taken out, as appears by a Declaration under the Clerks ſervant the Extracters hand, to be given to ſever l other perſons with whom the ſaidt *Mr Patrick Smith* and his Son had tranſacted, as having Right to the Executrie be vertue of the ſaid Aſſignation, albeit both Bands, the other Writes and Aſſignation were only conſigned as ſaid is; And upon thoſe Grounds we having raiſed Reduction of the ſaid Mr. *Patrick* his Spouſe their decreets. We the laſt Seſſion obtained the ſame to be reduced moſt juſtly, and we were declared to have the only Right to the Executrie, By which Decreets the Lords likewayes fand, that the ſaid Aſſignation, Bands and other Writes being only but conſigned papers, they were unwarrantably taken up be the ſaid Mr. *Patrick* and *Archibald Smiths*, and were as unwarrantably Regiſtrat, and Extracts were ordained to be given back, and the principal Aſſignation again tranſmitted, and put in Mr. *John M'kenzies* hands, and the Lords granted warrand to apprehend the ſaid Mr. *Patrick Smith* till the ſame was done; And alſo he was ordained to find Caution for our dammages *in eventu*, But he having withdrawn and abſconded himſelf, he could not be gotten that the Caption might be put in Execution againſt him, and albeit that order of the Lords was publickly intimat to all the Clerks, it having followed upon a Long Inner houſe debate: Yet notwithſtanding and ſince that time, and of late, and before the principal Aſſignation was got tranſmitted, there was a new Extract of the ſaid Aſſignation given out, which was a manifeſt contempt of the Lords of Seſſions Authoritie, and by this means they have not only endeavoured to defraud us of the ſumm due be the Lord Preſident, which as a foreſaid amounts to 9427 pound, But alſo have uplifted and imbazled almoſt the whole Executrie, which was due be, and in the hands of the other Debitors, amounting to very conſiderable ſums, ſo that albeit we are now declared by the decreet of Reduction to have Right to

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the said Executrie, yet by the Methods that has been taken, it seems these Decreets will be of little Effect to us; And seeing the Lord President asserts he has a Discharge, and that he made payment after the foresaid Decreet, so unwartantably made up, as said is; And that the Lords of Session, upon that account cannot meddle with the Reducing such a Discharge, so that its only proper for the Parliament to give Remedy in such a case.

It is therefore humbly craved, That your Grace, and Honourable Estates of Parliament may be pleased to take the Premisses to your Consideration; and to grant Warrand to cite the Viscount of Stair, Lord President, the said Mr. Patrick Smith, and his Wife, and such other persons as we shall condescend upon, to exhibit and produce the foresaid Discharge, alleadged to have been granted be the said Mr. Patrick Smith and his Wife, to the said Viscount of Stair, Lord President, upon such a competent time as the Parliament shall think fit to hear and see the foresaid above Discharge reduced, and our Dammages repaired, And that the Kings Advocat who was formerly imployed in the Case of, have written, may be ordained to plead and Consult in this Cause; Especially seeing that probablie we cannot get payment from the said Mr. Patrick Smith and his Wife, The Gift of his Escheat being alreadie Gifted, and both he and his Wife being fled, and that they have imbazled and conveyed away the Effects of the Executrie, And your Petitioner shall ever prayse.